

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAROLD WILLIAMS,

Petitioner,

– against –

C. JACOBSON, Superintendent, Wallkill
Correctional Facility,

Respondent.

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DATE FILED: 12/7/16

OPINION AND ORDER

15 Civ. 5319 (ER) (JLC)

Ramos, D.J.:

Harold Williams (“Williams” or “Petitioner”) brought a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his July 18, 2011 judgment of conviction in New York State Supreme Court, Bronx County (the “Petition”). On August 5, 2016, Magistrate Judge Cott issued the Report and Recommendation (“Report” or “R&R”), recommending that the Petition be denied. Doc. 20. For the reasons stated herein, the Court ADOPTS the R&R and directs the entry of judgment as recommended.

I. Background

Petitioner was convicted of two counts of criminal possession of a weapon in the second degree and sentenced to two concurrent, determinate terms of imprisonment of seven years and a five-year term of post-release supervision. R&R at 1. Williams bases his Petition on the introduction of a police bulletin at trial. *See id.* Williams argues that the trial court denied him due process by admitting the bulletin, which described three suspects in an uncharged string of robberies, and undermined its own limiting instruction by providing a copy of the bulletin to the jury while it was deliberating. *Id.* at 1, 13.

After he was convicted, Williams filed a motion to set aside the verdict, arguing that the trial court improperly admitted the police bulletin, but the trial court denied the motion. *Id.* at 12. Williams appealed his conviction and sentencing, arguing, *inter alia*, that the trial court violated his due process rights by admitting the bulletin and providing it to the jury while it deliberated. *Id.* The Appellate Division affirmed the judgment of the trial court. *Id.* (citing *People v. Williams*, 111 A.D.3d 448, 974 N.Y.S.2d 415 (1st Dep't 2013)). The state's highest court denied leave to appeal without elaboration on April 7, 2014. *Id.* at 13 (citing *People v. Williams*, 22 N.Y.3d 1204, 9 N.E.3d 919 (N.Y. 2014)).

On July 6, 2015, Williams filed his Petition. Doc. 2. On August 7, 2015, the case was assigned to this Court, and on August 17, 2015, it was referred to Magistrate Judge Cott for report and recommendation. Doc. 6. On August 5, 2016, Judge Cott issued his R&R, recommending that Williams' Petition be denied. Doc. 20. Specifically, he found that the Petition was procedurally barred due to William's failure to object at trial to any due process violations, and even if this procedural hurdle were overlooked, the Petition was also without merit. *Id.* at 1. The Report and Recommendation included notice to Petitioner that he could file any objections within fourteen days. *Id.* at 48-49. No objection has been filed.¹ The parties have therefore waived their right to object to the R&R. *See Dow Jones & Co. v. Real-Time Analysis & News, Ltd.*, No. 14 Civ. 131 (JMF), 2014 WL 5002092, at *1 (S.D.N.Y. Oct. 7, 2014) (citing *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008)).

¹ On August 19, 2016, the Court mailed the R&R to Williams at the updated address provided by Respondent on August 18, 2016. Doc. 23. Petitioner provided Respondent with an updated mailing address of 501 New Lots Avenue, Brooklyn, NY, 11207. *See* Doc. 22.

II. Standard of Review

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Parties may raise "specific," "written" objections to the report and recommendation "[w]ithin fourteen days after being served with a copy." *Id.*; *see also* Fed. R. Civ. P. 72(b)(2). A district court reviews *de novo* those portions of the report and recommendation to which timely and specific objections are made. 28 U.S.C. § 636(b)(1)(C); *see also United States v. Male Juvenile (95 Cr 1074)*, 121 F.3d 34, 38 (2d Cir. 1997). The district court may adopt those parts of the report and recommendation to which no party has timely objected, provided no clear error is apparent from the face of the record. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008).

III. Conclusion

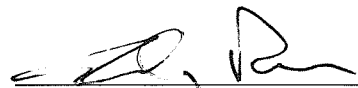
No party has objected to the R&R. The Court has reviewed Judge Cott's thorough and well-reasoned Report and finds no error, clear or otherwise. The Court therefore ADOPTS Judge Cott's R&R dated August 5, 2016 in its entirety and DENIES Williams' petition for a writ of habeas corpus for the reasons stated in the Report. The Clerk of the Court is directed to enter judgment, mail a copy of this Order to Petitioner at 501 New Lots Avenue, Brooklyn, NY, 11207, and close the case.

Furthermore, because Williams has not made a substantial showing of the denial of a constitutional right, no certificate of appealability shall issue. *See* 28 U.S.C. § 2253(c); *see also, e.g., Matthews v. United States*, 682 F.3d 180, 185 (2d Cir. 2012). The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith; therefore, *in forma pauperis* status is denied for purposes of an appeal. *See Coppedge v. United*

States, 369 U.S. 438, 444-45 (1962). In addition, the parties' failure to file written objections precludes appellate review of this decision. *PSG Poker, LLC v. DeRosa-Grund*, No. 06 Civ. 1104 (DLC), 2008 WL 3852051, at *3 (S.D.N.Y. Aug. 15, 2008) (citing *United States v. Male Juvenile*, 121 F.3d at 38).

It is SO ORDERED.

Dated: December 7, 2016
New York, New York



Edgardo Ramos, U.S.D.J.